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August 9, 2002

ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*, In the Matter of Performance
Measurements and Standards for Interstate Special Access
Services, CC Docket No. 01-321

Dear Ms. Dortch:

On August 9, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to act immediately to adopt performance measures, performance standards, reporting requirements, and enforcement procedures to govern the provision of interstate special access services by incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth Milkman", with a stylized, flowing script.

Ruth Milkman

Attachment

cc: Chairman Powell
Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Christopher Libertelli
Jordan Goldstein
Matthew Brill
Samuel Feder
William Maher
Jeffrey Carlisle
Michelle Carey
John Stanley
Uzoma Onyeije
Renee Crittendon
Mark Stone
Qualex International

August 9, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth St., S.W., Suite TW-A325
Washington, DC 20554

Re: Joint Competitive Industry Group Proposal Regarding Performance
Metrics, Standards and Reporting for Interstate Special Access Services

Dear Chairman Powell:

The undersigned competitive telecommunications carriers, trade associations, and user groups (collectively, the "Joint Competitive Industry Group" or "JCIG") urge the Commission to act immediately to adopt performance measures, performance standards, reporting requirements, and enforcement procedures to govern the provision of interstate special access services by incumbent local exchange carriers ("LECs"). Improving the provisioning of special access services, and deterring discrimination in the provision of these services, is a matter of urgent necessity for JCIG members because both end users as well as competitive carriers must rely on incumbent LECs to provide the last mile facilities that connect end user locations to the worldwide telecommunications networks.

Although the dependence of competitive carriers on incumbent LEC special access services is well-known to the Commission, the participation of business customers in the JCIG is especially noteworthy. Special access services are used extensively by many business customers. These services provide businesses with access to their corporate data networks and the Internet. Special access services are also utilized at thousands of call centers deployed in the United States. The reliable, timely provisioning of these services is central to the internal and external communications of large and small businesses throughout the United States.

Since release of the Commission's Notice of Proposed Rulemaking in this proceeding, the Joint Competitive Industry Group has devoted considerable time and effort to the development of a unified set of performance metrics, standards, and reporting requirements, and a comprehensive enforcement plan for special access services. The JCIG proposal was filed on January 22, 2002, and JCIG subsequently supplemented the record with additional detail and background information requested by the staff on June 18, 2002. With the exception of certain incumbent LECs, commenters in this proceeding are virtually unanimous in supporting adoption of the provisioning and reporting requirements as an effective, non-burdensome method of significantly improving the provisioning of incumbent-LEC provided special access services. Because

of the work of the JCIG, there is also a remarkable consensus on the details of these requirements.

The record in this proceeding is replete with unrebutted evidence of the incumbent LECs' continued failure to provide interstate special access service in a timely, non-discriminatory manner. To date, efforts to negotiate with the incumbent LECs to improve their performance have not been successful. Unless the FCC acts, carriers and end user customers will continue to lack any practical, effective means to correct the incumbents' dismal performance. Not surprisingly, no one has challenged the Commission's plenary authority to adopt and impose requirements that will improve the incumbent LECs' provision of interstate special access services. These services are at the core of the Commission's jurisdictional authority and have been an integral part of the agency's interstate access regulatory scheme for over 20 years. Enforcement of the statutory requirements that special access be provisioned in a reasonable and not unreasonably discriminatory manner, however, is extremely difficult absent Commission action in this rulemaking. Experience has shown that formal complaints alleging that an incumbent LEC is acting unreasonably in violation of Section 201(b) have been substantially hindered by the lack of an established standard for what constitutes reasonable performance. Discrimination is also extremely difficult to show in the absence of published data that have been collected in a standardized manner and that are subject to audit to ensure accuracy.

Nor should the pendency of other common carrier proceedings delay action in this docket. Special access provisioning requirements can be adopted on a stand-alone basis without prejudging or otherwise affecting pending local competition proceedings, such as the *Broadband Non-dominance*, *UNE Triennial Review*, and *ILEC Broadband Framework* proceedings. Special access services are simply the dedicated links used to connect end user customers to the networks of competitive carriers. The provision of these interstate services preceded, and has largely been unaffected by, the Telecommunications Act of 1996, and the development of new broadband services, such as DSL. In addition, in the *Special Access Provisioning* proceeding, unlike the *UNE Metrics* proceeding, commenters (aside from the incumbent LECs) are virtually unanimous in their support not only for the need for performance requirements, but also for the specific comprehensive set of performance requirements proposed by the JCIG. Moreover, state commissions have affirmatively looked to the FCC for action on special access provisioning, so that the Commission need not be concerned that its actions will affect concurrent state commission efforts.¹

In light of the number of Section 271 applications that have been granted and that are currently pending, adoption of special access metrics and corresponding reporting requirements is more critical than ever. As the BOCs have gained approval to offer originating in-region interLATA services in additional states, they increasingly view

¹ See Letter from Maureen O. Helmer, Chairman, New York Public Service Commission, to Chairman Michael K. Powell, May 22, 2001.

interexchange carriers not as customers, but as competitors. As long as the BOCs dominate the provision of special access services, as they do today, it is essential that performance metrics be adopted to counter these anticompetitive incentives.

The Commission has before it a strong record that establishes the problems faced by consumers of special access and that proposes a unified solution. Therefore, the Joint Competitive Industry Group urges the Commission to act immediately to adopt the JCIG's special access performance measures, standards, and reporting requirements, as well as its proposed enforcement plan.

Sincerely,

The Joint Competitive Industry Group

Douglas Jarrett
Keller & Heckman
American Petroleum Institute

Richard J. Metzger
Vice President – Regulatory and Public Policy
Focal Communications Corporation

John Windhausen, Jr.
President
Association for Local Telecommunications Services

Jake E. Jennings
Vice President – Regulatory Affairs
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Robert W. Quinn, Jr.
Federal Government Affairs Vice President
AT&T Corp.

Kelsi Reeves
Vice President – Federal Government Relations
Time Warner Telecom

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H. Russell Frisby, Jr.
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R. Gerard Salemme
Senior Vice President, External Affairs
XO Communications, Inc

Brian Moir
General Counsel
Ecommerce & Telecommunications Users Group

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Christopher Libertelli
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